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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

CENTER FOR BIOLOGICAL DIVERSITY
AND SIERRA CLUB,

Plaintiffs/Petitioners,

v.

CALIFORNIA DEPARTMENT OF
CONSERVATION, DIVISION OF OIL, GAS,
AND GEOTHERMAL RESOURCES, et al.,

Defendants/Respondents,

AERA ENERGY LLC, et al.,

Respondents-in-Intervention, and

WESTERN STATES PETROLEUM
ASSOCIATION, et al.,

Respondents-in-Intervention.

**ENDORSED
FILED
ALAMEDA COUNTY**

MAY 18 2016

CLERK OF THE SUPERIOR COURT

By _____

Xian-Xii Bowie

Case No: RG15769302

ASSIGNED FOR ALL PURPOSES TO
JUDGE GEORGE C. HERNANDEZ, JR.
DEPARTMENT 17

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF PLAINTIFFS' OPENING
BRIEF**

Date: July 15, 2016

Time: 8:30 a.m.

Dept: 17

Judge: Hon. George C. Hernandez

Action Filed: May 7, 2015

Hearing Date: July 15, 2016

INTRODUCTION

Pursuant to Evidence Code section 450 *et seq.*, the Center for Biological Diversity and the Sierra Club (“Plaintiffs”) respectfully request that the Court take judicial notice of the documents attached hereto. The Evidence Code mandates judicial notice of matters that comport with the requirements of Evidence Code section 452, provided that the requesting party: (1) gives adequate notice to the adverse party; and (2) includes sufficient information to enable the Court to take judicial notice. (Evid. Code, §§ 452, 453.) The documents referenced in this request fall directly within the category of matters appropriate for judicial notice under the Evidence Code.

ARGUMENT

Plaintiffs hereby request that the Court take judicial notice of Exhibits A through J to the Declaration of Hollin Kretzmann in Support of Plaintiffs’ Opening Brief (“Kretzmann Declaration”). The Court may take judicial notice of “regulations . . . issued by or under the authority of . . . any public entity in the United States.” (Evid. Code, § 452, subd. (b).) “Official acts” of public agencies are also the proper subject of judicial notice. (*Id.* at § 452, subd. (c); *Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518.) These include “records, reports and orders of administrative agencies.” (*Ibid.*; Evid. Code, § 452, subds. (b)-(c); *Arce v. Kaiser Found. Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482, 484.)

Exhibits A through J—public records authored and published by DOGGR or the California Office of Administrative Law (“OAL”) in the process of readoption of DOGGR’s interim Aquifer Exemption Compliance Schedule Regulations “(emergency regulations)” and the adoption of the permanent Aquifer Exemption Compliance Schedule Regulation (“permanent regulations”), and publicly available on DOGGR’s own website—are noticeable either as regulations issued by a public entity or as official acts of the executive branch of the state government.

Exhibits A through J include the following documents:

- DOGGR’s Notice of Proposed Rulemaking Action re the Permanent Regulations, dated May 29, 2015 (Kretzmann Decl. Exh. A);

- DOGGR's Proposed Text of Regulations for the Aquifer Exemption Compliance Schedule Permanent Regulations, posted on or about May 29, 2015 (Kretzmann Decl. Exh. B);
- DOGGR's Initial Statement of Reasons for the Aquifer Exemption Compliance Schedule Permanent Regulations, dated May 29, 2015 (Kretzmann Decl. Exh. C);
- DOGGR's Notice of Request for Readoption of Rulemaking Action for the Emergency Regulations, dated Oct. 1, 2015 (Kretzmann Decl. Exh. D);
- DOGGR's Notice of Request for Readoption of Emergency Rulemaking Action, dated Jan. 7, 2016 (Kretzmann Decl. Exh. E);
- Office of Administrative Law's (OAL) Approval of Permanent Regulations, dated April 20, 2016 (Kretzmann Decl. Exh. F);
- DOGGR's Final Text of Aquifer Exemption Compliance Schedule Permanent Regulations, dated April 20, 2016 (Kretzmann Decl. Exh. G);
- DOGGR's Final Statement of Reasons for Aquifer Exemption Compliance Schedule Permanent Regulations, dated April 20, 2016 (Kretzmann Decl. Exh. H);
- DOGGR's Response to Comments re Permanent Aquifer Exemption Compliance Schedule Regulations (Kretzmann Decl. Exh. I); and
- DOGGR Aquifer Exemption Information webpage. (Kretzmann Decl. Exh. J.)

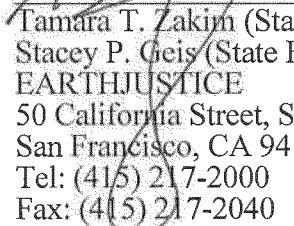
Exhibits A through J are each directly relevant to, and constitute further evidence supporting, Plaintiffs' allegation that DOGGR failed and continues to fail to meet its duty to prohibit injections into protected aquifers. DOGGR's readoption of the emergency regulations and adoption of the permanent regulations demonstrate the continuing existence of a safe harbor for injections into protected aquifers, part of DOGGR's actions that are being challenged in this suit. These documents are admissible because they were made by and within the scope of duty of a public employee, made at or near the time of the act, condition or event, and were prepared in a manner and method to indicate trustworthiness as to its authenticity. (Evid. Code, § 1280.)

1 **CONCLUSION**

2 For the foregoing reasons, Plaintiffs request that this Court judicially notice Exhibits A
3 through J of the Declaration of Hollin Kretzmann.

4 Respectfully submitted,

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6 DATED: May 18, 2016

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